



January 16, 2020

**FILED ELECTRONICALLY**

The Honorable Jocelyn G. Boyd  
Chief Clerk

**South Carolina Public Service Commission**

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RE: Application of Daufuskie Island Utility Company, Incorporated for  
Approval of an Increase for Water and Sewer Rates, Terms and  
Conditions, **Docket No. 2014-346-WS**

Dear Jocelyn:

Please allow this letter to serve as POAs' "brief memorandum addressing the matters to be argued" before the Commission at the Oral Arguments scheduled to take place on January 21, 2020 regarding implementation of South Carolina Supreme Court's ("Court's") Opinion No. 27905 ("Opinion").

On November 15, 2019, counsel for DIUC filed a letter with the Commission, asserting that "the record is fully developed and another hearing for further testimony or evidence is not necessary." Then on December 6, 2019, counsel for ORS filed a letter with the Commission indicating that "an additional hearing on DIUC's application must take place before the Commission . . . " and further that ORS would not present additional evidence "[a]bsent the presentation of additional evidence by DIUC . . . ."

The Commission cannot rule on remand absent additional documentary or testimonial evidence to support its decision. Based on the Court's decision that DIUC rate case invoices (the only issue raised by DIUC on appeal considered by the Court) were subjected to an improper "higher standard of scrutiny" on the first remand (Opinion at p. 6), scrutiny of those invoices must take place at this stage of the proceeding according to an "objective and measurable framework." (Opinion at p. 6). The Court did not specify what that "framework" is, and therefore the Commission cannot "implement" the Opinion based on the existing record.

Moreover, the Opinion mandates no such "implementation", making clear that "we do not address the merits at all." (Opinion at p. 6). As such, the Court did not order the Commission

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to approve those rate case expenses submitted by DIUC (or to rule in DIUC's favor on those issues the Court did not reach). *Falk v. Sadler*, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000) (when the appellate court makes no determination on the merits of the action, remand does not establish the law of the case). If the evidence or the law required that the Commission enter an order to that effect, the Court would have said so. *See Ackerman v. McMillan*, 324 S.C. 440, 447 S.E. 267 (Ct. App. 1996) (improper for trial court to litigate issue of liability when case had been remanded by Court of Appeals for a determination of damages only). The Court did no such thing.

As a practical matter, there is no way for the Commission to use the existing record to make a decision on the invoices. Even if you accept the proposition that some rate case expenses were approved at the initial hearing but not on the first remand (the rationale for the Court's decision), it does not follow that every rate case invoice submitted by DIUC on remand *must* be approved by the Commission now. Put another way, the "appropriate" standard of scrutiny (as applied to rate case expenses in the initial hearing or otherwise) has not been applied to those invoices submitted for the first time in the hearing on remand.

Therefore, a decision to accept and approve all the rate case expenses claimed by DIUC would reflect no scrutiny at all, and would evidence no framework of any kind that evaluated whether those invoices are valid and their amounts appropriately recovered by DIUC.

Fortunately, the Commission has a roadmap to resolve this case in a manner consistent with the Opinion. As the Commission will recall, DIUC had a need for an "expedited evaluation of its case" (Order No. 2018-68 at p. 27) on remand. Consequently, Order No. 2018-68 specifically authorized "the Company to request approval of these expenses in its next rate case, if it can provide supporting information for its invoices that satisfy the criteria listed by ORS witness Hipp presented at the rehearing." (Order No. 2018-68 at p. 39).

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Accordingly, the POAs propose that the Commission undertake the process described in Order No. 2018-68, albeit in this Docket rather than in the Company's next rate case. Specifically, the Commission should adopt a procedural schedule to allow 1) DIUC to "provide supporting information for its invoices" that is consistent with the criteria set out by ORS witness Hipp; 2) ORS to review of those invoices; 3) parties to file appropriate testimony and documentation regarding those invoices and ORS review thereof; and 4) a hearing or some other procedure through which this information can be presented for the Commission's consideration.

With kind regards, I am

Yours truly,

s/ John J. Pringle, Jr.  
John J. Pringle, Jr.

cc: Andrew Bateman, Esq./Jeff Nelson, Esq. (via electronic mail service)  
Thomas P. Gressette, Jr., Esquire (via electronic mail service)